

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

<b>ePLUS INC.,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>Civil Action No. 3:09-CV-620 (REP)</b>
	)	
<b>v.</b>	)	
	)	
<b>LAWSON SOFTWARE, INC.,</b>	)	
	)	
	)	
	)	
<b>Defendant.</b>	)	

**PLAINTIFF ePLUS, INC.'S MOTION TO PRECLUDE EVIDENCE OR ARGUMENT  
OF NON-INFRINGEMENT DUE TO DEFENDANT'S FAILURE TO PROVIDE  
DISCOVERY RELATING TO CUSTOMER-SPECIFIC IMPLEMENTATIONS OF  
ACCUSED PRODUCT MODULES**

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Pursuant to Fed. R. Civ. P. 37(b)(2)(A), Plaintiff ePlus, Inc. (“ePlus”) respectfully moves that the Court preclude Defendant Lawson Software, Inc. (“Lawson”) from presenting any evidence or argument of non-infringement to the effect that ePlus has not proven or cannot prove which (or how many) components or modules of its accused systems that Lawson has implemented on a customer-by-customer basis. Notwithstanding a Court Order (Order of March 30, 2010 (Dkt. No. 194)), that compelled Lawson to provide a complete interrogatory answer on this very topic, Lawson refused to comply and to disclose this information.

Lawson now seeks to take advantage of its own refusal to provide relevant discovery, as it has become evident from Lawson’s cross-examination of witnesses that it intends to argue at trial that there is insufficient proof to show which components or modules of its accused systems that it implemented on a customer-by-customer basis, and how often that has occurred. During a previous conference with the Court and the parties held on March 26, the Court ordered Lawson to provide the information sought by ePlus and stated, “***And if somebody doesn’t give you the information in discovery that you ask for that’s pertinent to their defense they want to raise it, you say, I want to move the strike the defense because they said we weren’t entitled to this and they didn’t give it to us. Then wham, the door is shut on it.***” (Conf. Call Tr., 3/26/10) at 20:20-24 (emphasis added).

As the Court’s admonition reflects, Lawson should not now be permitted to argue there is insufficient proof of facts that it refused to disclose in response to the Court’s Order. ePlus therefore respectfully requests that the Court now exclude from the trial of this action any evidence and/or argument by Lawson to the effect that ePlus has not proven or cannot prove for which of Lawson’s customers (or in what amount) Lawson has implemented its accused products and systems.

Respectfully submitted,

January 11, 2011

/s/

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## CERTIFICATE OF SERVICE

I hereby certify that on the 11<sup>th</sup> day of January, 2011, I will electronically file the foregoing

**PLAINTIFF *e*PLUS, INC.’S MOTION TO PRECLUDE EVIDENCE OR ARGUMENT  
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with the Clerk of Court using the CM/ECF system which will then send a notification of such filing (NEF) via email to the following:

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/s/

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